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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS
Twenty-sixth (extraordinary) session
13-31 August 2001

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on Economic, Social and Cultural Rights

NEPAL

1. The Committee on Economic, Social and Cultural Rights considered the initial report of Nepal on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/1990/5/Add.45) at its 44th, 45th and 46th meetings (E/C.12/2001/SR.44-46), held on 22 and 23 August 2001, and adopted, at its 55th meeting (E/C.12/2001/SR.55), held on 29 August 2001, the following concluding observations.

A. Introduction

2. The Committee welcomes the initial report of the State party, which was in general prepared in conformity with the Committee's guidelines, as well as the written replies to the Committee's list of issues (E/C.12/Q/NEP/1). However, it regrets the nine-year delay in the submission of the initial report as well as the delay in the submission of the written replies to the Committee's list of issues.

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3. The Committee notes with appreciation the open and constructive dialogue with the delegation and its willingness to answer the questions raised by the Committee but regrets the absence of experts to answer all the technical questions.

B. Positive aspects

4. The Committee notes with satisfaction the assertion by the State party that the rights contained in the Covenant could be justiciable. It further notes with satisfaction the extraordinary power of the Supreme Court to issue orders for the enforcement of the fundamental rights of the citizens.

5. The Committee notes with appreciation that Nepal signed in 1996 a technical cooperation project agreement and a memorandum of understanding with the Office of the High Commissioner for Human Rights and that under the project a number of activities have been undertaken on the administration of justice, treaty accession, reporting obligations, strengthening of the National Human Rights Commission, compilation and publication in the Nepali language of international instruments ratified by Nepal, and support to NGOs.

6. The Committee welcomes the establishment of an independent National Human Rights Commission, as well as the establishment of a committee, under the chairmanship of the Chief Secretary of the Cabinet Secretariat, to execute the plan of action for human rights in accordance with the Vienna Declaration and Programme of Action.

7. The Committee welcomes the establishment in 1995 of the Ministry of Women, Children and Social Welfare.

8. The Committee notes with satisfaction the adoption of the Anti-Trafficking Act to combat trafficking in women and children, as well as the implementation of measures at national and regional level for this purpose.

9. The Committee welcomes the abolishment in 2000 of kamaiya, the system of agricultural bonded labour.

10. The Committee notes that the State party has adopted measures to abolish and punish the practices of polygamy, dowry, Deuki (a tradition of dedicating girls to a god or goddess; the girls become "temple prostitutes") and prostitution among the Bedi caste.

C. Factors and difficulties impeding the implementation of the Covenant

11. The Committee takes note that the efforts of the State party to comply with its obligations under the Covenant are impeded by the high rate of population growth, the slow-down in economic growth, foreign debt, the effect of some aspects of the structural adjustment programmes it has adopted as well as the Maoist insurgency, which have negatively affected the enjoyment of economic, social and cultural rights by the population, and especially the most vulnerable and marginalized groups of society.

12. The Committee also acknowledges that the prevalence of certain customary traditions in Nepal continues to impede the full enjoyment by women and girls of their rights under the Covenant.

13. The Committee notes that the State party's national economy depends heavily on agriculture in the rural areas.

D. Principal subjects of concern

14. The Committee regrets the unclear status of the Covenant in the domestic legal order of the State party and the lack of case law with respect to any of the rights under the Covenant.

15. The Committee notes that the State party has adopted a series of plans on several human rights issues but regrets the lack of benchmarks to illustrate the extent or degree of achievements.

16. The Committee is deeply concerned about the extent of poverty in Nepal, in particular in rural areas where poverty and discrimination against women are most pronounced. In this regard, it notes that the targets set by the Ninth Plan, which aim at the progressive reduction of the poverty rate from 42 per cent to 32 per cent, were not reached. Further, it notes that the Poverty Alleviation Commission has not yet been established.

17. The Committee notes with concern the legal inequalities between women and men in the field of inheritance, the regime of shared assets in marriage, divorce, child custody in case of divorce and remarriage, and the conferring of nationality to children on equal terms. It expresses its concern also about the de facto inequality that exists between men and women in the Nepalese society, despite legislative guarantees of equality. It further notes with concern the low representation of women in public service, the high female illiteracy rate and the unequal wages for equal work.

18. The Committee is deeply concerned at the high number of women and girls being trafficked for prostitution. The Committee also regrets the continuation of polygamy and the practices of dowry, Deuki and prostitution among the Bedi caste, particularly in rural areas.

19. The Committee is concerned at the high rate of domestic violence and the absence of specific legislation in this field.

20. The Committee is concerned at the high unemployment and underemployment rates in Nepal and about the lack of skills-oriented education.

21. The Committee notes with concern that land and agrarian reforms have still not been addressed properly and that tenants therefore have not obtained security of tenure, and that a great number of peasants do not yet possess any land.

22. The Committee is concerned that although the system of agricultural bonded labour known as Kamaiya was abolished in July 2000, the emancipated Kamaiyas are facing many problems, including lack of housing, land, work, and education for their children.

23. The Committee is concerned that the legal minimum wage is not sufficient to provide a decent standard of living for workers and their families, in particular in the agricultural sector.

24. The Committee expresses its concern at the fact that the State party has not ratified ILO Conventions Nos. 29, 81, 87 and 182.

25. The Committee regrets that there are provisions in the existing legislation of the State party whereby "moral turpitude" - a term which is not defined with sufficient precision and which can lead to arbitrary interpretations, constitutes a valid ground for removal, dismissal or disqualification from employment in the civil service.

26. The Committee expresses its concern at the high incidence of child labour in Nepal, especially in rural areas.

27. The Committee notes with regret that 29 per cent of the population has no access to safe water, 90 per cent has no access to health services and 84 per cent has no access to sanitation.

28. The Committee is concerned about the occurrence of forced evictions, such as in the cases of the people displaced by the Kulekhani and Marshynagdi hydropower projects, without adequate compensation or appropriate relocation measures.

29. The Committee notes with concern that only Tibetans who arrived in Nepal before 1990 and the Bhutanese are recognized as refugees by the authorities. It further notes that while the Tibetan refugees benefit from appropriate treatment, the Bhutanese refugees are not allowed to work, are not allowed freedom of movement outside their refugee camps, and do not have access to the same health and educational facilities as Nepalese citizens.

30. The Committee notes with concern that the State party has not acceded to the 1951 Convention relating to the Status of Refugees, the 1967 Protocol relating to the Status of Refugees, the 1954 Convention relating to the Status of Stateless Persons, or the 1961 Convention on the Reduction of Statelessness. It is also noted that the Nepalese authorities have no mechanism to deal with unaccompanied refugee children.

31. The Committee is concerned about the high incidence of infant and child mortality, especially in rural areas. It further notes that many children in rural areas suffer from malnutrition.

32. The Committee notes with deep concern the high rates of maternal mortality, especially in rural areas, owing mainly to unsafe and illegal abortions, and that female life expectancy in Nepal is lower than male life expectancy.

33. The Committee notes with alarm that abortion is absolutely illegal and is considered a criminal offence, punishable by severe sentences, and cannot be carried out even when pregnancy is life threatening or the result of incest or rape. The Committee also regrets the fact that the reproductive and sexual health programmes are not implemented because of lack of financial resources.

34. The Committee is concerned that under the current national health plan for 1997-2017 the role of the State in the development of a national health care system consistent with the structural adjustment programmes is minimized. It further notes that the mental health service in Nepal is insufficient and that there is no community mental health programme available.

35. The Committee is deeply concerned that the HIV/AIDS epidemic in the State party is spreading at an alarming rate due to commercial sex and trafficking of women and children, and sex tourism.

36. The Committee notes that the State party has initiated free primary education but is concerned that the policy of compulsory education has yet to be implemented. It further notes the great disparity in enrolment in primary schools between girls and boys, the high drop-out rate among pupils, and the low quality of education in public schools.

E. Suggestions and recommendations

37. The Committee strongly urges the State party to ensure that the Covenant is taken into full account in the formulation and implementation of all policies concerning economic, social and cultural rights and that its provisions are justiciable in fact.

38. The Committee strongly recommends that Nepal's obligations under the Covenant be taken into account in all aspects of its negotiations with international financial institutions, such as the International Monetary Fund, the World Bank and the World Trade Organization, in order to ensure that economic, social and cultural rights, particularly of the most vulnerable groups, are duly protected.

39. The Committee urges the State party to continue to develop and adopt a national plan of action for human rights, which would include economic, social and cultural rights, in accordance with the 1993 Vienna Declaration and Programme of Action and in the context of a participatory, open and consultative process. It also requests the State party to annex a copy of the plan to its second periodic report to the Committee.

40. The Committee encourages the State party to ensure that the National Human Rights Commission does not concentrate solely on civil and political rights, but accords equal [illegible] and attention to economic, social and cultural rights.

41. The Committee recommends that Nepal explicitly take the Covenant into account in its policies, programmes and projects on poverty alleviation. It further recommends that the State party establish the Poverty Alleviation Commission. In this regard, the State party is referred to the statement on poverty adopted by the Committee on 4 May 2001.

42. The Committee urges the State party to implement more vigorously existing legislation on gender equality and to incorporate a gender equality perspective in legislation, with a view to ensuring greater equality of men and women, especially in the areas of family, employment, labour conditions and representation in public services and administration.

43. The Committee urges the State party to enact or enforce legislation prohibiting customary practices, such as polygamy, dowry, Deuki and prostitution among the Bedi caste, and restricted ownership by women of land and family property, which violate the rights of women and girl children and to take measures to combat such practices by all means, including national educational programmes.

44. The Committee recommends that the State party adopt specific legislation on domestic violence against women and children.

45. The Committee recommends that the State party enforce its legislation in an effective way and establish administrative mechanisms and monitoring systems to prevent and combat trafficking in women and children. It further recommends the strengthening of measures to allow the return, rehabilitation and reintegration into society of trafficked women.

46. The Committee urges the State party to enforce effectively legislation and programmes to put an end to discrimination, in particular with regard to access to housing, work and education, against persons belonging to the Dalits and the liberated Kamaiyas.

47. The Committee recommends that the State party take effective action to reduce the unemployment rate by, inter alia, providing skills-oriented education and training, in particular in the agricultural sector.

48. The Committee recommends that the State party review its legislation and adopt all appropriate measures with a view to continuing agrarian reform and resolving land tenure issues.

49. The Committee recommends that the minimum wage be determined on the basis of criteria for an adequate standard of living in the State party, especially for those working in the agricultural sector.

50. The Committee strongly recommends that the State party ratify all relevant ILO conventions, in particular Conventions Nos. 29, 81 and 87.

51. The Committee urges the State party to define with more precision the term "moral turpitude", so that it cannot be used arbitrarily as a ground for removal, dismissal or disqualification from employment in the civil service.

52. The Committee urges the State party to take effective measures to strengthen existing laws on child labour and to improve its monitoring mechanisms to ensure that those laws are fully enforced to protect children from economic exploitation. In this regard, the Committee urges the State party to continue its collaboration with ILO/IPEC and to consider ratifying the Worst Forms of Child Labour Convention (No.182).

53. The Committee recommends that the State party provide adequate compensation and appropriate relocation measures to those who are forcibly evicted because of development projects, such as in the cases of the Kulekhani and Marshyangdi hydropower projects, in line with the Committee's general comments Nos. 4 and 7.

54. The Committee recommends that the State party acknowledge people other than those from Tibet and Bhutan as refugees and provide the same kind of treatment to all refugees. The Committee invites the State party to consider acceding to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

55. The Committee urges the State party to take remedial action to address the problems of clandestine abortions, unwanted pregnancies and the high rate of maternal mortality. In this regard, the Committee urges the State party to reinforce reproductive and sexual health programmes, in particular in rural areas, and to allow abortion when pregnancies are life threatening or a result of rape or incest.

56. The Committee requests that the State party, in its next periodic report, provide data about shorter-term health plans and more detailed information about mentally disabled persons and access to private hospitals and institutions by the more marginalized sectors of the population.

57. The Committee recommends that primary and basic education be made free and compulsory for all without discrimination on the grounds of gender, ethnicity, religion or social status.

58. The State party is urged to adopt a comprehensive National Education for All (EFA) Plan, as anticipated by paragraph 16 of the Dakar Framework of Action. When formulating and implementing its EFA Plan, the State party is urged to take into account the Committee's general comments Nos. 11 and 13 and general comment No. 1 of the Committee on the Rights of the Child, and to establish an effective monitoring system for the Plan. The State party is also encouraged to continue the technical advice and assistance from UNESCO in relation to both the formulation and implementation of its EFA Plan.

59. The Committee urges the State party to incorporate benchmarks to measure the level of achievement expected at different times within its plans of actions in various human rights-related fields so that progress can be monitored.

60. The Committee recommends that the State party ensure that projects involving privatization of water supply provide for continued, assured and affordable access to water by local communities, indigenous people, and the most disadvantaged and marginalized groups of society.

61. The Committee recommends that the State party continue the technical assistance from and cooperation with the Office of the High Commissioner for Human Rights and the relevant United Nations specialized agencies and programmes, particularly in the preparation of its second periodic report to the Committee.

62. The Committee requests the State party to disseminate its concluding observations widely among all levels of society and to inform the Committee of all steps taken in this respect. It also encourages the State party to consult with non-governmental organizations and other members of civil society in the preparation of the second periodic report.

63. Finally, the Committee requests the State party to submit its second periodic report by 30 June 2006 and to include in the report detailed information on the steps it has undertaken to implement the recommendations contained in the present concluding observations.

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